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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
)

Review of the Commission's Rules)
and Policies Affecting the Conversion)
To Digital Television)

MM Docket No. 00-35

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OFFICE OF THE SECRETARY

COMMENTS OF
FREEDOM COMMUNICATIONS, INC.

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May 17, 2000

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Review of the Commission's Rules)	MM Docket No. 00-39
and Policies Affecting the Conversion)	
To Digital Television)	

**COMMENTS OF
FREEDOM COMMUNICATIONS, INC.**

Freedom Communications, Inc. ("Freedom") hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking (the "Notice") in the above-referenced proceeding.

I. INTRODUCTION

Freedom is the parent corporation of eight full-service commercial television stations: WLNE(TV), New Bedford-Providence, Massachusetts; WRGB(TV), Albany-Schnectady-Troy, New York; WTVC(TV), Chattanooga, Tennessee; KFDM(TV), Beaumont-Port Arthur, Texas; WWMT(TV) Grand Rapids-Kalamazoo-Battle Creek, Michigan; WLAJ(TV), Lansing, Michigan; KTVL(TV), Medford, Oregon; and WPEC(TV), West Palm Beach, Florida.¹ All of these Stations operate in small or mid-sized markets. As an experienced operator of these Stations, Freedom is well qualified to comment on the effect of the Commission's rules and proposals for the implementation of digital television ("DTV").

¹ WLNE(TV), New Bedford-Providence, Massachusetts, WRGB(TV), Albany-Schnectady-Troy, New York, and KFDM(TV), Beaumont-Port Arthur, Texas have NTSC assignments on Channel 6.

Freedom has supported and continues to support the Commission's efforts to make DTV a reality for consumers across the nation. However, many of the new proposals made in the Notice threaten the DTV plans that broadcasters such as Freedom have been making for years. First and foremost, even though it declined to do so in its previous DTV decisions, the Commission now proposes an NTSC service replication requirement. The Commission also proposes to adopt signal strength requirements over a DTV Station's city of license. In addition, the Commission threatens to preclude use of TV Channel 6 for DTV purposes, in the face of the long-established plans of some Channel 6 Stations to move back to Channel 6 after the DTV transition occurs. These proposals, if adopted, would substantially alter the DTV regulatory framework that Freedom and other broadcasters have relied upon in planning the implementation of DTV at their existing Stations.

The most disturbing aspect of the Notice is the idea that the Commission would raise such fundamental issues, for the first time, (i) in the context of its routine, periodic review of the conversion to DTV, (ii) two years after the DTV service rules and allocation proceedings finally were resolved, and (iii) four months after the Commission required that Stations engineer their DTV facilities and submit DTV construction permit applications. In order to comply with the Commission's admittedly "aggressive" DTV build-out schedule,² Stations already have begun to purchase necessary equipment and secure appropriate tower space. The Commission simply cannot meet its goal to "insure continued progress in the DTV conversion and to eliminate potential sources of delay,"³ by now changing the rules that licensees have relied upon in planning for the DTV transition.

² Notice at ¶ 3.

³ Mass Media Bureau News Release, FCC Commences Periodic Review of Digital Television Conversion (rel. Mar. 8, 2000).

II. THE COMMISSION'S PROPOSALS WILL DISRUPT STATIONS' TRANSITION PLANS AND UNDERMINE DTV IMPLEMENTATION

The DTV transition plan in effect today is the product of more than 10 years of consideration by the Commission of viewpoints expressed by all facets of the industry. Given the DTV progress to date, it is puzzling that the Commission would now consider changing the rules upon which DTV Stations are required to operate, particularly given its awareness of the years of planning and millions of dollars in expenditures that Stations must make before they can transmit a DTV signal. The Commission seeks to facilitate the DTV transition by eliminating potential sources of delay; however, reopening fundamental service rule issues that have long since been decided will facilitate the very delay that the Commission wants to avoid.

Although the Commission previously decided not to adopt an explicit replication requirement, the Notice seeks comment on this issue based on the Commission's concern that some licensees have proposed to locate their DTV facilities some distance away from their existing NTSC facilities and communities of license.⁴ The Commission proposes to require replication and to enforce the rule by forfeiting the protection of a Station's full replication allotment if the Station fails to comply.⁵ Thus, the Commission proposes to discontinue its current policy of protecting the full allotted DTV facility.⁶

Each of these proposals, if adopted, would substantially affect the transition strategies that Stations have already begun to implement. The Commission adopted its DTV

⁴ Notice at ¶¶ 21-22.

⁵ *Id.* at ¶ 25.

⁶ *Id.* at ¶ 26.

Allotments in 1997.⁷ These were final in 1998.⁸ Stations were required to submit their DTV applications by November 1, 1999. Based on the Table of Allotments, as well as on the rules and policies the Commission has adopted with respect to the DTV transition, Stations have incurred enormous expenses, and have done so without the guarantee of a return on their investments, as virtually no one is watching DTV now.

Stations in small and mid-sized markets, such as the Freedom Stations, cannot be expected to both maintain the current DTV build-out schedule and accept the increased implementation risk posed by the proposed changes in the DTV service rules. Fundamental changes with respect to replication and the protection of allotments would require drastic changes in planning and build-out, and would severely delay the progress of conversion. Freedom therefore urges the Commission to maintain the existing framework in order to provide Stations with regulatory certainty, and thereby facilitate the swift transition to DTV.

The Commission also has proposed to require that a DTV principal community be served by a stronger signal than that specified for the general DTV service contour and has asked for comment on the signal level it should require.⁹ As an initial matter, it is impossible to comment meaningfully on these proposals while DTV construction permit applications are still pending before the Commission, because those applications may not be approved as proposed. In Freedom's case, if the requested power levels are not approved, it is possible that the proposed city grade signal level could be a problem. While Freedom does not anticipate having a problem

⁷ Sixth Report and Order, 12 FCC Rcd 14588 (1997).

⁸ Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, *on further recon.*, Second Memorandum Opinion and Order, 14 FCC Rcd 1348 (1998).

⁹ Notice at ¶¶ 30-34.

with the proposed coverage requirements for most of its Stations, the proposal could affect plans for WLNE, Freedom's Channel 6 Station in the New Bedford-Providence market.

As Freedom has explained numerous times in the prior DTV proceedings, WLNE's transmitter location historically has been a handicapped one.¹⁰ WLNE's transmitter is located in Tiverton, Rhode Island – about 20 miles from the Rehoboth antenna farm where virtually all other Stations in the New Bedford-Providence market are located. Simply stated, WLNE has an “antenna orientation problem” – TV viewers in the market look toward the antenna farm where every other Station is located, instead of looking at WLNE's tower. Thus, WLNE cannot provide an over-the-air signal that is comparable to those of the other network Stations in that market. WLNE has suffered this competitive disadvantage for more than 33 years.

Fortunately, the Commission's final Allotment Table provides flexibility to accommodate some of Freedom's concerns with respect to WLNE. WLNE has filed a DTV

¹⁰ Copies of the comments cited here are provided at Tabs 1-5: Comments of Freedom Communications, Inc. on the Notice of Proposed Rulemaking, Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities, MM Docket No. 97-182 at 2-3 (Oct. 30, 1997) (attached at Tab 1); Reply Comments of Freedom Communications, Inc. on the Sixth Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service, MM Docket No. 87-268, at 2-3 (Jan. 24, 1997) (attached at Tab 2); Comments of Freedom Communications, Inc. on the Sixth Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, at 3-6 (Nov. 22, 1996) (attached at Tab 3); Comments of Freedom Newspapers, Inc. on the Second Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, at 4-6 (Nov. 16, 1992) (attached at Tab 4); Comments of Freedom Newspapers, Inc. in Support of Petitions for Reconsideration, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, at 4-6 (July 10, 1992) (attached at Tab 5).

application that proposes to transmit from the Rehoboth antenna farm where its competitors are located. That facility, as proposed, will more than adequately serve WLNE's city of license. But that facility has not yet been approved. Unless and until the Commission acts on that application, WLNE will not know with certainty whether it can comply with the newly proposed city-of-license coverage requirement. WLNE would be placed back in the same competitive quagmire if it could not build at Rehoboth because (i) its proposed DTV facility was authorized at a reduced power, and (ii) that power level did not allow WLNE to adequately serve its city of license.

WLNE's situation is unique. Freedom previously has explained that only two other Stations suffer from a similar disadvantage that can be remedied at DTV.¹¹ While the Commission may have legitimate concerns that several Stations propose to locate their DTV Stations far from their cities of license, the Commission should consider such applications based on individual circumstances rather than adopt a one-size-fits-all rule approach. The unique problems facing WLNE illustrate the shortcomings of the Commission's proposal to address this issue in the context of a rule with broad application. The Commission should not overlook the opportunity to help historically disadvantaged Stations, such as WLNE, merely because a handful of Stations may be attempting to change their markets.

III. THE COMMISSION SHOULD MAINTAIN THE FREQUENCIES ASSOCIATED WITH TV CHANNEL 6 FOR DTV USE

In the context of its proposal to adopt a channel election process, the Commission has asked whether Channel 6 should be cleared from TV use and made available for other

¹¹ Reply Comments of Freedom Communications, Inc. on the Sixth Further Notice of Proposed Rulemaking, Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service, at 2-3 (attached at Tab 2).

broadcast purposes, such as Digital Audio Broadcast (“DAB”).¹² Freedom has explained in the DAB proceeding why the Commission should summarily reject further consideration of any proposed use of Channel 6 for DAB purposes.¹³ Namely, the Commission specifically found in its prior DTV decisions that it is in the public interest to retain the frequencies associated with Channel 6 for DTV use. In reliance on those DTV orders, some of Freedom’s Channel 6 Stations have implemented plans and made substantial investments that include the roll-out of DTV broadcasts on less favorable UHF frequencies, followed by the eventual conversion of Freedom’s current Channel 6 Stations to all digital broadcast. These Stations are relying on their ability to return to Channel 6 at the end of the transition period. Freedom therefore urges the Commission to preserve Channel 6 for television broadcasting, consistent with the current DTV framework.

IV. CONCLUSION

Substantial progress is being made in the transition from analog technology to DTV. That progress is threatened by the Commission’s proposals to make fundamental changes to its established DTV service rules at the critical time when Stations are investing millions of dollars to implement their DTV plans. Many of these plans will need to be revisited, and possibly delayed, to take into account the effect of the new rules. At this point in the DTV transition process, regulatory certainty is critical for both operators and investors. Freedom urges the Commission to maintain its current rules and not to adopt the proposed changes.

¹² Notice at ¶ 39; *see also* Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service, Notice of Proposed Rulemaking, MM Docket No. 99-325, FCC 99-327 (rel. Nov. 1, 1999).

¹³ Comments of Freedom Communications, Inc., Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service, MM Docket No. 99-325 (Jan. 24, 2000) (attached at Tab 6).

Respectfully submitted,

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
Preemption of State and Local Zoning and)
Land Use Restrictions on the Siting,) MM Docket No. 97-182
Placement and Construction of Broadcast)
Station Transmission Facilities)

**COMMENTS OF FREEDOM COMMUNICATIONS, INC. ON THE
NOTICE OF PROPOSED RULEMAKING**

Freedom Communications, Inc. ("Freedom") submits these comments in response to the Commission's *Notice of Proposed Rule Making* in the above-referenced proceeding.¹

Freedom is the parent corporation of the licensees of six full-service commercial television stations: WLNE(TV), New Bedford-Providence, Massachusetts; WRGB(TV), Albany-Schneectady-Troy, New York; WTVC(TV), Chattanooga, Tennessee; KFDM-TV, Beaumont-Port Arthur, Texas; KTVL(TV), Medford, Oregon; and WPEC-TV, West Palm Beach, Florida. All of these stations operate in small or mid-sized markets.

Freedom continues to support the Commission's efforts to make DTV a reality.² The rapid deployment of DTV will be jeopardized, however, unless the Commission takes swift action to preempt state and local tower siting restrictions as it has proposed to do in this proceeding. Freedom has had first hand experience struggling with burdensome, costly, and time

¹ *Notice of Proposed Rulemaking*, MM Docket No. 97-182, FCC 97-296 (Rel. Aug. 19, 1997) (*Notice*).

² Freedom has actively participated in the Commission's DTV proceeding.

consuming zoning battles in seeking permission to relocate WLNE's NTSC tower to the antenna farm where most of the other stations in the market are located. Ultimately, after a long and drawn out struggle, Freedom was denied the authority to move. Now, in transitioning to DTV, Freedom and countless other station operators are faced with the prospect of encountering that same type of zoning approval process all over again. Freedom urges the Commission to adopt its proposal to preempt state and local restrictions to ensure that the same tower siting issues that have burdened WLNE will not be replicated in the DTV environment.

Freedom agrees that federal preemption is particularly appropriate in this context, to facilitate the successful implementation of DTV. As the Commission has observed in its *Notice*, federal preemption is appropriate and permissible where state or local law stands as an obstacle to the accomplishments and execution of Congressional objectives or is necessary to achieve authorized Commission purposes. *Notice* at ¶ 12. Congress has required the implementation of DTV on an aggressive schedule. Station operators will not be able to meet such requirements unless they can obtain the appropriate zoning approvals. As requested in the *Notice*, Freedom submits these comments to document the obstacles that it has faced in the past in obtaining local zoning clearances for its broadcast facilities. *Notice* at ¶¶ 17-23.

WLNE's transmitter location historically has been a handicapped one.³ Originally the New Bedford-Providence market was served only by CBS and NBC. In the Commission's attempts in the early 1960's to establish three competitive, off-air VHF stations in the New

³ A more complete discussion of the history of WLNE's disadvantageous transmitter location is set forth in comments Freedom filed with the Commission in the DTV proceeding. See Comments of Freedom Communications, Inc., MM Docket No. 97-182 (filed Nov. 22, 1996); Reply Comments of Freedom Communications, Inc., MM Docket No. 97-182 (filed Jan. 24, 1997).

Bedford-Providence market, and thereby provide ABC an outlet there, it “shoehorned” Channel 6 into its present site through the expedient of sanctioning a transmitter site that is short-spaced to three other VHF stations and located about 20 miles away from the antenna farm where virtually all other stations in the market are located. Despite these short spacings, the Commission concluded “that the proposal [for a Tiverton location] ... represents the most practical solution for bringing a much needed VHF service to Providence and southern Massachusetts.”⁴ Because WLNE’s present transmitter site is disadvantageously situated for the existing off-air antenna orientation in the market, however, over-the-air viewers of the station have received a markedly inferior over-the-air signal from WLNE, compared to the signals of the other network stations in the market.

The transition to DTV provides an opportunity to rectify these past inequities and the DTV allotment scheme adopted by the Commission appears to provide WLNE the necessary flexibility to do so. A successful transition to DTV, however, also will be dependent on WLNE’s ability to obtain the zoning clearance needed to construct and operate facilities at a new tower location. WLNE’s prior history with a proposed tower move illustrates the significant obstacles that can be presented by the local zoning process.

Freedom initiated efforts in 1986 to relocate WLNE’s transmitter to a more competitive location in Rehobeth, Massachusetts. To find a site that would allow WLNE to continue to offer service to New Bedford, and provide coverage to new consumers, Freedom commissioned a comprehensive land survey and proposed innovative engineering techniques to ensure that the relocation would avoid interference to other television stations. After completing

⁴ *WTEV Television*, 23 Rad. Reg. at 1056.

exhaustive studies, Freedom identified the very small geographic area that would allow it to accomplish these objectives, and secured an option to purchase a 25 acre parcel of land. This parcel was about two miles from the existing three antenna towers that already served the area and was located on farm land. Freedom initiated the requisite approval process with the local zoning authority. Considerable delays stalled the consideration and resolution of Freedom's request. Along the way, a number of local residents expressed concerns (which were unfounded) that the proposed tower would pose a radiation threat to the community. Those concerns were not an issue because the proposed tower met all FCC regulations. The proposed was referred to a town meeting and defeated. The processes that were put in place by the zoning board were ineffective, and WLNE lost an opportunity to bring additional service to the public. In 1989, more than three years and hundreds of thousands of dollars later, Freedom's dogged efforts ultimately were quashed by a grass roots lobbying campaign. The zoning process administered by the Planning Board effectively foreclosed Freedom's ability to relocate its tower.

In the transition to DTV, many stations will face challenges similar to the ones Freedom experienced in its prior attempt to relocate the WLNE tower, including the numerous delays, considerable expense, and burdensome regulatory requirements in the zoning approval process. Many stations are likely to be limited by the allotment table in the geographic areas where they can construct a DTV tower. Thus, they face the prospect of encountering zoning restrictions that may significantly limit their ability to use the limited number of available DTV tower sites.

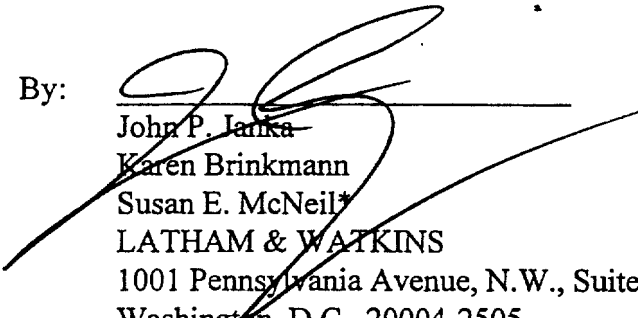
Broadcast television stations will require significant flexibility in order to meet the Congressionally mandated construction requirements and begin to provide DTV service --

deadlines that simply cannot be met unless the Commission adopts a scheme to prevent local zoning from being an obstacle. To ensure the rapid introduction of DTV, Freedom urges the Commission to adopt its proposal to preempt state and local zoning restrictions as set forth in its *Notice*.

Respectfully submitted,

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October 30, 1997

*Admitted in Maryland only.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of
Advanced Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket No. 87-268

**REPLY COMMENTS OF FREEDOM COMMUNICATIONS, INC. ON THE
SIXTH FURTHER NOTICE OF PROPOSED RULEMAKING**

Freedom Communications, Inc. (Freedom) submits these reply comments in response to the Commission's *Sixth Further Notice of Proposed Rulemaking* in the above-referenced proceeding.¹

Freedom continues to support the Commission's efforts to make DTV a reality and agrees with many of the commenter's proposals that would facilitate the fair and efficient implementation of DTV. In order to foster a competitive DTV marketplace, Freedom strongly urges the Commission to use the new DTV allotment table to rectify certain inequities in the current NTSC channel allotment scheme. As it previously has indicated, Freedom believes that the Commission's currently proposed DTV allotment table would provide sufficient flexibility to redress such inequities. Any alternate table that is adopted similarly should accommodate the unique circumstances that exist with respect to WLNE-TV in the Providence-New Bedford market.

¹ *Sixth Further Notice of Proposed Rulemaking*, MM Docket No. 87-268, FCC 96-317 (Rel. Aug. 14, 1996) (*Sixth Further Notice*).

As set forth more fully in Freedom's comments,² WLNE-TV, Freedom's Channel 6 station in the Providence-New Bedford market, historically has been disadvantaged because of its existing transmitter site at Tiverton, Rhode Island. Located about 20 miles from the antenna farm where virtually all other stations in the Providence-New Bedford market are located, WLNE-TV currently cannot provide a comparable over-the-air signal to those of the other network stations in that market. The Commission's proposal, which would assign DTV Channel 49 to WLNE-TV, appears to provide the flexibility needed to allow WLNE-TV to relocate its transmitter site to the Rehoboth antenna farm without causing increased interference to other stations. In doing so, the Commission's proposed table appears to go a long way toward resolving a serious competitive problem that WLNE-TV has endured for more than 30 years.³

The comments submitted in this proceeding confirm that Freedom's situation with WLNE-TV is unique. Of the approximately 250 comments submitted in this proceeding, *only two* of the commenters raise a concern similar to the one expressed by Freedom with respect to WLNE-TV.⁴ Golden Orange Broadcasting Co. (Golden Orange) and Fouce Amusement Enterprises (Fouce), both serving the Anaheim, Orange County, California market, note that they are similarly disadvantaged by their existing transmitter sites and request accommodation in the DTV allotment table to permit relocation of their facilities to the antenna farm where most of their competitors are located. Like Freedom, Golden Orange notes that, under the Commission's

² Comments of Freedom Communications, Inc. (filed Nov. 22, 1996).

³ Any changes to this proposed table, of course, may eliminate the flexibility for Freedom to move its tower in this manner.

⁴ See Comments of Golden Orange Broadcasting Co., Inc. (filed Nov. 22, 1996); Comments of Fouce Amusement Enterprises (filed Nov. 22, 1996).

proposed DTV allotment table, it could make such a move without causing increased interference to other stations.⁵ Thus, these limited circumstances provide good cause for evaluating certain DTV allotments on the basis of sites other than those occupied by existing TV stations.⁶

In general, Freedom also supports the Broadcasters' Caucus request for flexibility in obtaining Commission approval to modify DTV transmitter site locations. Under the Broadcasters' Caucus proposal, the Commission would approve any proposed change to the DTV table that does not cause "unaccepted additional interference" to assigned NTSC or DTV stations.⁷ Freedom requests, however, that, if the Commission adopts a similar approach, it should clarify the standard to be applied in determining "unaccepted additional interference" for purposes of approving transmitter site modifications.

As the Commission is well aware, under any DTV allotment plan, virtually every TV station will experience some level of interference from adjacent stations. This is simply the result of having to provide every existing station two channels of limited spectrum during the NTSC-DTV transition period. Likewise, virtually any proposed modifications of the table will also generate some level of interference to nearby stations. Both the Commission and the Broadcasters' Caucus have recognized the inevitability that many stations will want to modify their allotments in order to improve their ability to provide competitive DTV service. But absent the adoption of a realistic definition of "unaccepted additional interference," the Broadcasters' Caucus proposal to "wait and see" whether proposed modifications to the table can be

⁵ Fouce's comments do not address the merits of the DTV channels proposed either by the Commission or the Broadcasters' Caucus.

⁶ See *Sixth Further Notice*, MM Docket No. 87-268 at ¶ 56.

⁷ Broadcasters' Caucus Comments at 50 (filed Nov. 22, 1996).

accommodated will be meaningless. As long as a potentially affected adjacent station can complain about *any* changes to the plan that alter its interference situation in *any matter* whatsoever, it will have no incentive to engage in any negotiations with respect to the proposed modification.⁸

Thus, it is imperative that the Commission clearly define at the outset how it will determine whether a proposed modification to the DTV table will cause unacceptable interference. Specifically, Freedom requests that the Commission approve such modifications to the extent that the net effect of any such modification would result in a decrease in interference to stations in the surrounding area. For example, an increase in interference to Station X could be offset by a successful reduction in interference to Stations Y and Z. In addition, if Station A already is predicted to receive a certain level of interference from Station B, Station A should have no grounds to complain if Station B proposes a modification where the same (or lesser) level of interference would occur in a different geographic area within Station A's protected contour. Moreover, the Commission should clarify that DTV allocation modifications would be permitted to the extent that any new interference or increase in interference to other stations would be *de minimus*.⁹ Finally, stations should be permitted to employ engineering solutions (*e.g.* directional antennas) to minimize any potential increase in interference caused by DTV allocation modifications. Such flexibility and clarification regarding DTV allocation modifications is critical to accommodate the practical realities in moving to the DTV

⁸ The Broadcasters' Caucus has proposed utilizing an industry coordinating committee to evaluate and accommodate proposed channel and facility changes. See Broadcasters' Caucus Comments at 53-59.

⁹ For example, UHF taboo interference areas can often be very small "islands" of interference of less than one km in radius.

marketplace. Absent the adoption of these types of means for quantifying unacceptable interference, the new DTV Table will afford no flexibility during the DTV transition phase.

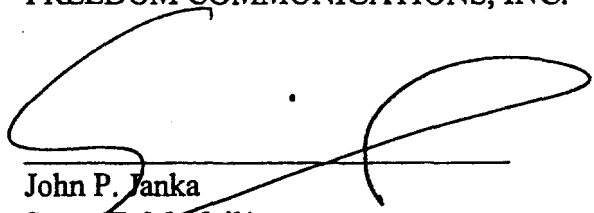
As the Commission has recognized, the transition to DTV will be costly, particularly for stations that are forced to relocate twice in the move to their permanent DTV channel. Freedom already has commented that certain lower VHF channels (*i.e.* stations providing service on Channels 2-6) would bear a disproportionate burden of the costs associated with the implementation of DTV, compared with their market competitors who will be able to return to their "upper" VHF channels at the end of the DTV transition. Freedom therefore has urged the Commission to retain Channels 2-6 for DTV service. It would be fundamentally unfair to require stations such as WLNE-TV to endure the costs of a double channel move without at least accommodating the type of transmitter site relocation requests proposed by WLNE-TV and thereby providing certainty that the historical inequities in the current NTSC allotment table will be rectified.

For the reasons set forth above, Freedom believes that a reasonable solution to the current WLNE-TV transmitter site problem could be accommodated under the Commission's currently proposed DTV allotment table. Freedom therefore urges the Commission to incorporate this type of flexibility in WLNE-TV's channel allotment as it implements a final allotment table for DTV.

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In the Matter of)
Advanced Television Systems)
and Their Impact upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)

COMMENTS OF FREEDOM COMMUNICATIONS, INC. ON THE
SIXTH FURTHER NOTICE OF PROPOSED RULE MAKING

Freedom Communications, Inc. (Freedom) submits these comments in response to the Commission's *Sixth Further Notice of Proposed Rule Making* in the above-referenced proceeding.¹

I. INTRODUCTION

Freedom is the parent corporation of the licensees of six full-service commercial television stations: WLNE(TV), New Bedford-Providence, Massachusetts; WRGB(TV), Albany-Schenectady-Troy, New York; WTVC(TV), Chattanooga, Tennessee; KFDM-TV, Beaumont-Port Arthur, Texas; KTVL(TV), Medford, Oregon; and WPEC-TV, West Palm Beach, Florida. All of these stations operate in small or mid-sized markets. As an experienced operator of these stations, Freedom is well-qualified to comment on the effect of the Commission's rules and proposals for the implementation of digital television (DTV).²

¹ *Sixth Further Notice of Proposed Rulemaking*, MM Docket No. 87-268, FCC 96-317 (Rel. Aug. 14, 1996) (*Sixth Further Notice*).

² Digital TV refers to any technology that uses digital techniques to provide advanced television services such as high definition TV (HDTV), multiple standard TV (SDTV) and other advanced features and services. See *Sixth Further Notice*, FCC 96-317 at para. 1, n. 1.

Freedom continues to support the Commission's efforts to make DTV a reality. As Freedom previously noted, however, in order to provide existing programming *via* DTV, each of the approximately 1500 operating TV stations will have to spend tens of millions of dollars. This existing free, over-the-air broadcasting service will remain strong and viable only if a realistic DTV implementation plan is adopted. As the Commission moves forward in implementing DTV, Freedom urges the Commission to establish an allocation table that addresses certain inequities in the current NTSC allocation scheme, avoid the problems associated with operating outside of the "core" DTV spectrum, and provide a realistic implementation schedule for stations operating largely through the use of TV translators.

II. PLANS TO ALLOT DTV CHANNELS BASED ON CURRENT TRANSMITTER SITES MUST ACCOUNT FOR UNUSUAL CIRCUMSTANCES

In the *Sixth Further Notice*, the Commission proposed taking into account existing NTSC transmitter sites in the DTV allotment process. As Freedom has noted before in this proceeding, Freedom continues to have serious concerns about any DTV allotment plan that perpetuates the inequities of the current NTSC allotment system.³ The current NTSC allotment scheme is a "patchwork quilt" of sorts that has developed over the years. In its effort to accommodate new broadcast outlets in a number of markets, the Commission has been compelled by the current NTSC plan to "shoehorn in" new allotments in a manner that places these new stations at a significant competitive disadvantage to other stations in their markets. This proceeding -- the creation of a new framework for DTV broadcast services -- provides a unique opportunity to correct such inequities.

³ See Comments of Freedom Newspapers, Inc. on the Second Further Notice of Proposed Rulemaking, MM Docket No. 87-268 (filed Nov. 16, 1992).

A. Using Existing Transmitter Sites Will Perpetuate Current Inequities in Certain Circumstances

In the *Sixth Further Notice*, the Commission requested comment on any circumstances where it might be desirable to evaluate DTV allotments on the basis of sites other than those occupied by existing TV stations.⁴ WLNE-TV, Freedom's Channel 6 station in the New Bedford-Providence market, presents a real-life example of one such circumstance. In order to understand the possible effect of the DTV allotment process on WLNE, it is necessary to understand WLNE's history.

WLNE's transmitter location historically has been a handicapped one. Originally the New Bedford-Providence market was served only by CBS and NBC. In the Commission's attempts in the early 1960's to establish three competitive, off-air VHF stations in the New Bedford-Providence market, and thereby provide ABC an outlet there, it "shoehorned" Channel 6 into its present site through the expedient of sanctioning a transmitter site that is short-spaced to three other VHF stations and located about 20 miles away from the antenna farm where virtually all other stations in the market are located. Because WLNE's present transmitter site is disadvantageously situated for the existing off-air antenna orientation in the market, over-the-air viewers of the station have received a markedly inferior over-the-air signal from WLNE, compared to the signals of the other network stations in the market.

The original authority to construct WLNE's Channel 6 station specified a transmitter site that was off the mainland of Massachusetts, on Martha's Vineyard.⁵ Eventually, the transmitter site was moved to its present location in Tiverton, Rhode Island.⁶

⁴ See *Sixth Further Notice*, FCC 96-317 at para. 56.

⁵ See *WTEV Television*, 23 Rad. Reg. (P&F) 1050b, 1052 (1962).

That site is short-spaced to co-channel Stations WRGB, Schenectady, New York and WCSH-TV, Portland, Maine, and is also short-spaced to adjacent channel WCVB-TV (Channel 5), Boston, Massachusetts. Despite these short spacings, the Commission concluded "that the proposal [for a Tiverton location] ... represents the most practical solution for bringing a much needed VHF service to Providence and southern Massachusetts."⁷

However, the "move-in" to Tiverton has had a substantial public interest drawback: off-air antennas in the market generally are oriented toward the north, away from WLNE's transmitter site. WLNE's site is about 20 miles to the south of the Rehoboth antenna farm where the transmitter sites of other stations in the New Bedford-Providence market are located. Viewers with their antennas oriented toward Boston can receive the numerous Boston stations, most of which have their transmitting towers located at the antenna farm in Needham, Massachusetts. Because of the geographic relationship of Needham to Rehoboth, many viewers in the New Bedford-Providence market can orient their antennas to receive both the Boston and Providence stations, but they cannot also adequately "see" WLNE at its Tiverton site.

Because of the predominant off-air antenna orientation to pick up the Providence and Boston television stations, viewers of WLNE receive an inferior quality signal compared to the other two network stations in the market. The Commission's plan to use WLNE as a short-spaced hybrid station serving both New Bedford and Providence has not fully achieved either of its goals, and has unintentionally hindered the station's ability to serve viewers off-air.

⁶ See File Nos. BMPCT-6524; BLCT-1719.

⁷ *WTEV Television*, 23 Rad. Reg. at 1056.

B. DTV Allotments Present Opportunities to Restore Competition

The current allotment patchwork has developed over the years in an effort to accommodate a growing demand for broadcast service. In certain circumstances, like WLNE's, second-rate solutions were implemented where there were no other technically viable alternatives. The Commission now has the opportunity for a fresh start as it moves toward the implementation of DTV. In correcting the inequities of the past through the DTV allotment process, the Commission would further its efforts to foster the competitive provision of new and innovative DTV services.

Freedom recognizes that this is a complicated proceeding and that establishing a DTV allotment table that corrects such inequities is a challenge. Freedom has been working with Commission staff and the Broadcasters' Caucus in an effort to forge a reasonable solution for WLNE. Based upon those conversations and our own technical analysis, Freedom believes that the Commission's proposed allotment table provides sufficient flexibility to accommodate some of Freedom's concerns. Under the Commission's proposal, WLNE would be assigned to Channel 49 at its Tiverton transmitter site. As our technical analysis (attached as Exhibit A) indicates, it appears that Channel 49 also could be used at Rehoboth without causing additional interference to other stations.⁸

Freedom believes that a reasonable solution to the current WLNE problem could be accommodated under the Commission's proposed allotment table. Freedom therefore urges the Commission to incorporate this type of flexibility in WLNE's channel allotment as it

⁸ Certain pockets of predicted interference may shift as a result of a relocation of the transmitter site, but no increase in interference is expected.

implements a final allotment table. In doing so, the Commission will go a long way toward resolving a problem that WLNE has endured for more than 30 years.⁹

III. ANY "CORE CHANNEL" APPROACH MUST ADDRESS THE INEQUITIES OF PROVIDING STATIONS BOTH NTSC AND DTV CHANNELS OUTSIDE OF THE CORE

Freedom generally believes that the full amount of spectrum that currently is allocated for NTSC service should continue to be available in the future, particularly during the DTV transition period. As the owner of three Channel 6 stations, Freedom has serious concerns about the Commission's core spectrum proposal as it relates to channels located outside of the core.¹⁰ Specifically, Freedom is concerned that lower VHF stations operating in channels that the Commission has proposed to reclaim as part of its core approach (i.e. Channels 2-6) would permanently bear a disproportionate share of operating costs in the provision of DTV. Freedom is also concerned about the impact of potentially hitting such stations with a "double whammy," requiring them to temporarily locate to a non-core transitional channel in the upper UHF band (i.e. Channels 52-69), taking away their existing NTSC channel, and later requiring them to transition again to a DTV channel in the core region that becomes available after other stations complete their DTV transition. Both scenarios would place lower VHF stations at a significant competitive disadvantage as they enter the DTV marketplace.

Under the Commission's core spectrum approach, certain lower VHF stations (i.e., stations providing service on Channels 2-6), would also bear a disproportionate burden of the

⁹ In order to ensure that a meaningful resolution may be reached, however, the Commission must also give careful consideration to any request by Freedom to move its DTV transmitter site to the Rehoboth antenna farm once it is assigned to Channel 49.

¹⁰ WLNE(TV), New Bedford-Providence, Massachusetts, WRGB(TV), Albany-Schneectady-Troy, New York, and KFDM-TV, Beaumont-Port Arthur, Texas are all assigned to Channel 6.

costs associated with the implementation of DTV compared with their market competitors who will be able to return to their "upper" VHF channels. In moving from a VHF channel to a UHF channel, most stations will face a substantial increase in operating costs, particularly those who will operate at the high end of the UHF spectrum. For example, under the Commission's proposed allotment plan, Freedom's WLNE, serving New Bedford-Providence, would move from Channel 6 to 49 and Freedom's WRGB, serving Albany-Schnectady-Troy, would move from Channel 6 to Channel 34. The power level needed to operate WLNE's DTV service at channel 49 is about 7 times that needed for its NTSC service at Channel 6, and will cost about \$640,000 more per year. The power level needed to operate WRGB's DTV service at Channel 34 is about 18 times that needed for its NTSC service on Channel 6, or about \$1.1 million more per year.

Under the Commission's plan, WLNE and WRGB will face a substantial increase in the costs of providing the power needed to operate their DTV service at Channel 49 or 34. While their VHF competitors may incur similar costs during the transition period, those costs would dramatically be reduced once they are permitted to return to their original VHF channel for DTV at the end of the transition period.¹¹ Rather than starting in the DTV marketplace on an even footing, the substantial disparity that results from allowing some stations to return to the VHF channels while requiring others to give theirs up would place stations that are presenting operating at lower VHF channels at a substantial competitive disadvantage.

Thus, Freedom encourages the Commission to make every effort to retain the lower VHF stations for DTV service. We believe that various technical penalties (i.e. leaky power lines, ignition noise, and educational FM interference) deserve more study before the low

¹¹ Freedom estimates that stations that provide DTV in their original VHF channels will incur lower power costs than they currently bear for NTSC service.

band VHF is discarded for DTV. Any extra power requirements necessary to counteract these issues clearly would be less than the excessive power required to replicate VHF coverage using UHF DTV broadcasting. In fact, allocating some additional power specifically for Channel 6 allotments might solve the educational FM interference problem without causing any other interference problems to either adjacent Channel 5 DTV stations or other Channel 6 assignments.

These concerns are particularly acute in situations where a lower VHF station would be assigned a DTV channel outside the core and therefore would be hit with the “double whammy” of relocating twice – once to a transitional DTV channel outside of the core, and again to a permanent DTV channel in the Commission’s core spectrum when one becomes available sometime down the line.¹² Thus, Freedom strongly endorses the Commission’s allocation principle which calls for awarding the assignment of a DTV channel inside the “core” to a lower VHF station. As the Commission has recognized, since stations rely on channel identification as a critical component in retaining and expanding viewership, it is important to minimize the confusion and expenses associated with several channel transitions.¹³ The substantial operational and technical costs in changing frequencies twice would place low VHF stations at a competitive disadvantage no one else would have. The transition to DTV will be expensive enough for stations that need to move only once. Coupled with the substantial uncertainty of which core channel they eventually would be assigned after the transition period, the problems of the “double whammy” mandate that non-core NTSC stations should be assigned non-core DTV spectrum only as a last resort.

¹² See *Sixth Further Notice*, FCC 96-317, at paras. 24-25.

¹³ *Id.* at para. 24 (noting the importance of establishing a plan to allow the greatest number of broadcasters to establish early and permanent channel identification with viewers).

IV. A FLEXIBLE IMPLEMENTATION SCHEDULE MUST BE ADOPTED FOR CONVERTING TV TRANSLATORS TO DTV

Freedom supports the Commission's efforts to minimize the burden on smaller stations that operate largely through the use of TV translators.¹⁴ Freedom agrees that a flexible approach is needed to ensure that these stations can convert to DTV in a workable and realistic time frame.

Under the Commission's current implementation schedule, a station that operates largely through the use of TV translators (such as Freedom's KTVL in Medford, Oregon) would incur substantial costs converting all of its translators to DTV by the proposed conversion date.¹⁵ KTVL's signal, for example, is now transmitted on more than thirty translators in order to provide service to Southwestern Oregon. Many of these translators serve only a few hundred people, many of whom rely on over-the-air broadcast for their news and entertainment programming, and many of whom will not transition to a new DTV sets on the same schedule as individuals in major markets.* Although NTSC translators can be placed into operation for a few thousand dollars, the cost and availability of DTV translators remains unknown. Thus, absent the adoption of a flexible DTV implementation schedule, KTVL, in the 139th largest market, could be faced with converting its main station and each of its 30 translators on the same schedule as a station in the Los Angeles market that has no need for translator facilities. In view of consumers' substantial cost in acquiring DTV receivers, Freedom expects that there is unlikely to be an immediate

¹⁴ *Id.* at para. 70 (requesting comment on any and all means of lessening the impact on low power TV and TV translator stations in the transition to DTV).

¹⁵ Under the existing implementation schedule, the Commission has (i) adopted a two-year application/three-year construction period for DTV facilities, (ii) proposed that existing stations simulcast 50% of their programming in seven years, and simulcast all of their programming in nine years, and (iii) proposed full DTV conversion in fifteen years.

demand for DTV in many of the smaller communities, such as Medford, that are served largely through the use of TV translators. This type of a schedule therefore does not comport with the realities of the marketplace that KTVL faces. The Commission therefore should take a liberal view with respect to requests for extensions of time to implement DTV that may be filed by TV stations that operate largely through the use of TV translators.

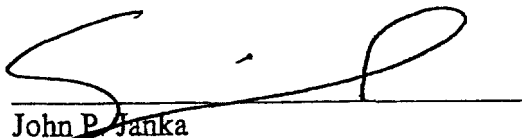
V. CONCLUSION

Freedom is committed to working with the Commission to make DTV become a reality. At the same time, however, Freedom cannot support a DTV scheme that perpetuates current inequities in the allocation table, particularly where a viable alternative exists for rectifying an historical anomaly such as the one that WLNE endures. To the extent that it adopts a core channel allocation approach, Freedom encourages the Commission to address the significant constraints imposed by assigning DTV channels outside of the core to stations with NTSC VHF channels that also are outside the core. Finally, in order to account for the economic realities of implementing DTV, Freedom supports the adoption of a flexible DTV implementation schedule to accommodate stations that operate largely through the use of translators.

Respectfully submitted,

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November 22, 1996

TECHNICAL STATEMENT
IN SUPPORT OF COMMENTS OF
FREEDOM COMMUNICATIONS, INC.
ON THE SIXTH FURTHER NOTICE
OF PROPOSED RULE MAKING

This Technical Statement was prepared on behalf of Freedom Communications, Inc. in support of Comments on the *Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87-268. This statement was prepared to demonstrate the allocation feasibility of relocating WLNE-TV, New Bedford, Massachusetts, to the Rehoboth, Massachusetts antenna farm, home to the other commercial TV broadcast stations in the Providence, RI-New Bedford, MA market.

WLNE-TV is licensed for operation on Channel 6 with an nominal peak visual effective radiated power of 100 kW and an antenna height above average terrain of 283 meters. WLNE-TV's transmitter site is located approximately 30 km south-southeast of Providence. As illustrated in Figure 1, the Rehoboth TV transmitting "antenna farm" is located approximately 32 km (20 miles) north-northwest of WLNE-TV's present transmitter site. The Rehoboth transmitter antenna farm is employed by WJAR(TV), WPRI-TV and WNAC-TV, all Providence, RI. It is manifest from Figure 1 that most Providence viewers with outdoor receiving antennas pointed toward the Rehoboth antenna farm will find the Boston television stations within the

main beam aperture of the antenna.¹ Also evident is that receiving antennas pointed in the north/northeasterly direction will substantially attenuate signals from the south/southeast -- the direction of WLNE-TV. The new DTV allotment table presents an opportunity for the Commission to correct this situation.

The Commission proposed the allotment of DTV Channel 49 for WLNE-TV ostensibly at the WLNE-TV Tiverton tower site. However, study indicates that DTV Channel 49 may be utilized at the Rehoboth antenna farm with very little adverse impact on the DTV allotment scheme. Figure 2 is a tabulation of the critical allocation constraints for WLNE-TV based on the proposed separation criteria proposed in the FCC's *Sixth Further Notice*. This table demonstrates the feasibility of the use of Channel 49 for WLNE-TV at the Rehoboth site.² There are two instances where there are reductions in the taboo channel separations: Channel 44, Boston; and Channel 56, Cambridge. However, in both instances, it is estimated that the predicted interference areas are reduced by 380 square kilometers and 210 square kilometers, respectively. With respect to the Channel 48 assignment at Worcester, there is a new short-spacing created. However, any additional interference to this assignment may be

¹ The 3-dB beamwidth of typical outdoor TV receiving antennas is approximately 60°, although it will vary depending on frequency, antenna type, and other factors.

² It is noted that the Broadcaster's Caucus proposed DTV channel allotment plan, which utilizes a DTV allotment program similar to the Commission's, allots Channel 49 to another station for use at the Rehoboth tower site. This is further evidence that the use of Channel 49 at Rehoboth is a feasible alternative for WLNE-TV.

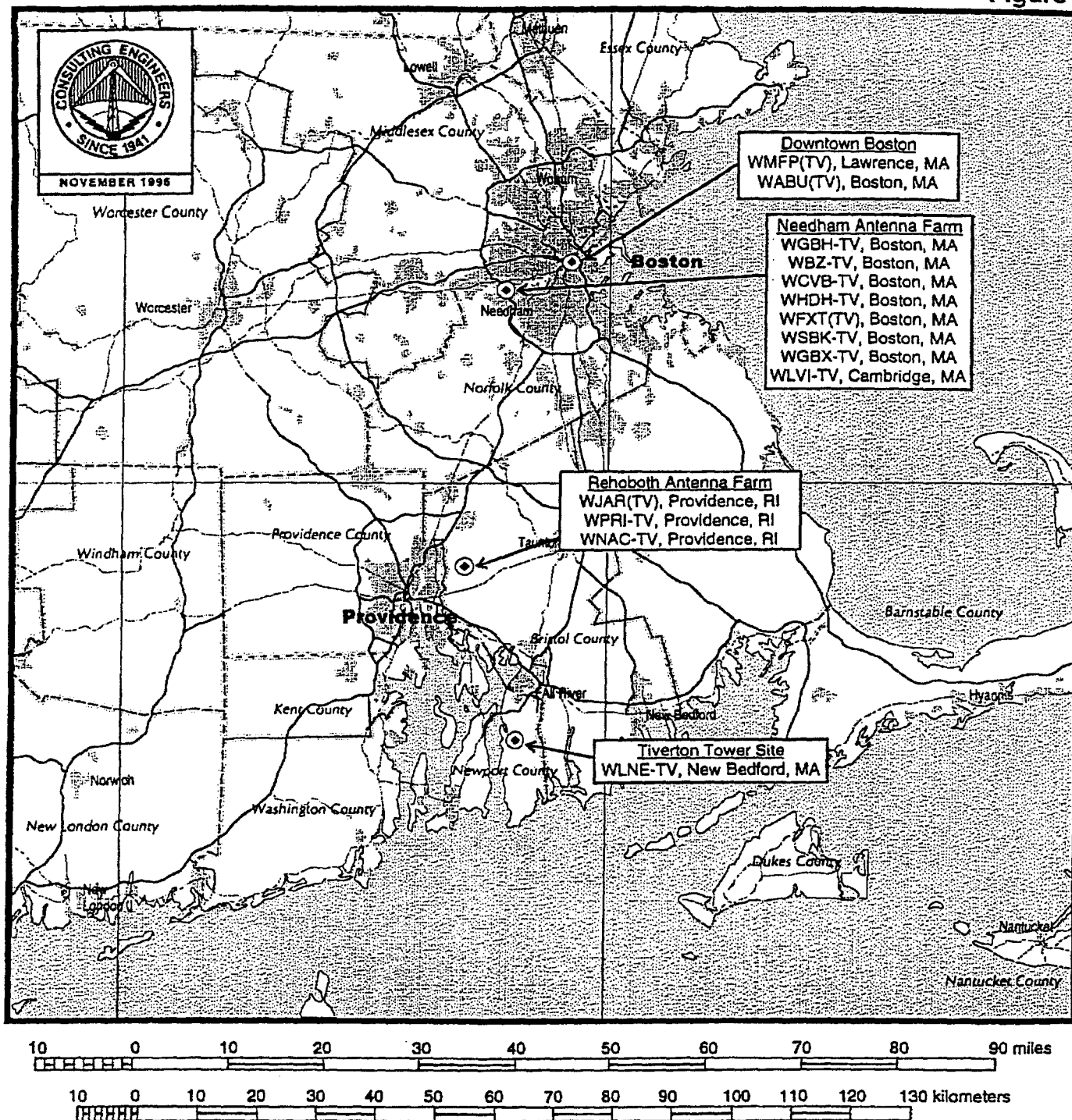
minimized through the use of a carefully engineered
directional antenna.

Louis Robert du Treil, Jr.

Louis Robert du Treil, Jr.
du Treil, Lundin & Rackley, Inc.
240 N. Washington Blvd., Ste. 700
Sarasota, FL 34236
(941)366-2611

November 18, 1996

Figure 1



PRIMARY BROADCAST TV TRANSMITTER SITES IN PROVIDENCE-NEW BEDFORD-BOSTON AREA

FREEDOM COMMUNICATIONS, INC.

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2

TECHNICAL STATEMENT
IN SUPPORT OF COMMENTS OF
FREEDOM COMMUNICATIONS, INC.
ON THE SIXTH FURTHER NOTICE
OF PROPOSED RULE MAKING

Channel 49 DTV Allocation Analysis for
Existing WLNE-TV Site and Rehoboth Antenna Farm Site

Channel/ Location	Relation	WLNE-TV Site (Tiverton)			Rehoboth "Antenna Farm"		
		Actual Distance (mi)	Required Distance (mi)	Comment	Actual Distance (mi)	Required Distance (mi)	Comment
35 (N) Lewiston-ME	+14	161.7	15-50	Clear	144.7	15-50	Clear
41 (N) Windsor-VT	+8	142.5	15-50	Clear	123.1	15-50	Clear
44 (N) Boston-MA	+5	49.3	15-50	Short	30.0	15-50	Short ¹
48 (N) Worcester-MA	+1	65.3	6-55	Clear	51.8	6-55	Short ²
48 (D) Littleton-NH	+1	192.4	20-55	Clear	172.5	20-55	Clear
49 (N) Bridgeport-CT	0	105.9	135	Short	106.9	135	Short
49 (D) Amsterdam-NY	0	180.7	135	Clear	166.8	135	Clear
49 (N) Littleton-NH	0	192.4	135	Clear	172.5	135	Clear
50 (D) New London-CT	-1	53.8	20-55	Short	57.0	20-55	Clear
50 (N) Derry-NH	-1	79.3	6-55	Clear	59.5	6-55	Clear
53 (N) Norwich-CT	-4	51.0	15-50	Clear	52.0	15-50	Clear
56 (N) Cambridge-MA	-7	48.8	15-50	Short	29.6	15-50	Short ³
64 (N) Providence-RI	-15	19.7	15-50	Short	0.9	15-50	Clear

¹ Although there is an apparent increase in the short-spacing, there is an estimated net decrease in predicted interference of approximately 380 square kilometers for the move from the Tiverton site to the Rehoboth site.

² While there would be a short-spacing created to the Channel 48 assignment at Worcester, additional interference to this assignment may be minimized through the use of a properly engineered directional antenna arrangement.

³ Although there is an apparent increase in the short-spacing, there is an estimated net decrease in predicted interference of approximately 210 square kilometers for the move from the Tiverton site to the Rehoboth site.